

REFERENCE TITLE: prime contracting deduction; university improvements

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1484**

Introduced by  
Senators Verschoor, O'Halleran; Representatives Clark, Nichols, Reagan,  
Sinema, Weiers JP

### AN ACT

AMENDING SECTION 42-5029, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 351, SECTION 7 AND CHAPTER 354, SECTION 27; REPEALING SECTION 42-5029, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 276, SECTION 1; AMENDING TITLE 42, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-5032.02; AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; PROVIDING FOR THE DELAYED REPEAL OF SECTION 42-5032.02, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; RELATING TO THE PRIME CONTRACTING TRANSACTION PRIVILEGE TAX CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5029, Arizona Revised Statutes, as amended by  
3 Laws 2006, chapter 351, section 7 and chapter 354, section 27, is amended to  
4 read:

5 42-5029. Remission and distribution of monies; definition

6 A. The department shall deposit, pursuant to sections 35-146 and  
7 35-147, all revenues collected under this article and articles 4, 5 and 8 of  
8 this chapter pursuant to section 42-1116, separately accounting for:

9 1. Payments of estimated tax under section 42-5014, subsection D.

10 2. Revenues collected pursuant to section 42-5070.

11 3. Revenues collected under this article and article 5 of this chapter  
12 from and after June 30, 2000 from sources located on Indian reservations in  
13 this state.

14 4. Revenues collected pursuant to section 42-5010, subsection G and  
15 section 42-5155, subsection D.

16 B. The department shall credit payments of estimated tax to an  
17 estimated tax clearing account and each month shall transfer all monies in  
18 the estimated tax clearing account to a fund designated as the transaction  
19 privilege and severance tax clearing account. The department shall credit  
20 all other payments to the transaction privilege and severance tax clearing  
21 account, separately accounting for the monies designated as distribution base  
22 under sections 42-5010, 42-5164, 42-5205 and 42-5353. Each month the  
23 department shall report to the state treasurer the amount of monies collected  
24 pursuant to this article and articles 4, 5 and 8 of this chapter.

25 C. On notification by the department, the state treasurer shall  
26 distribute the monies deposited in the transaction privilege and severance  
27 tax clearing account in the manner prescribed by this section and by sections  
28 42-5164, 42-5205 and 42-5353, after deducting warrants drawn against the  
29 account pursuant to sections 42-1118 and 42-1254.

30 D. Of the monies designated as distribution base the department shall:

31 1. Pay twenty-five per cent to the various incorporated municipalities  
32 in this state in proportion to their population to be used by the  
33 municipalities for any municipal purpose.

34 2. Pay 38.08 per cent to the counties in this state by averaging the  
35 following proportions:

36 (a) The proportion that the population of each county bears to the  
37 total state population.

38 (b) The proportion that the distribution base monies collected during  
39 the calendar month in each county under this article, section 42-5164,  
40 subsection B, section 42-5205, subsection B and section 42-5353 bear to the  
41 total distribution base monies collected under this article, section 42-5164,  
42 subsection B, section 42-5205, subsection B and section 42-5353 throughout  
43 the state for the calendar month.

1           3. Pay an additional 2.43 per cent to the counties in this state as  
2 follows:

3           (a) Average the following proportions:

4           (i) The proportion that the assessed valuation used to determine  
5 secondary property taxes of each county, after deducting that part of the  
6 assessed valuation that is exempt from taxation at the beginning of the month  
7 for which the amount is to be paid, bears to the total assessed valuations  
8 used to determine secondary property taxes of all the counties after  
9 deducting that portion of the assessed valuations that is exempt from  
10 taxation at the beginning of the month for which the amount is to be paid.  
11 Property of a city or town that is not within or contiguous to the municipal  
12 corporate boundaries and from which water is or may be withdrawn or diverted  
13 and transported for use on other property is considered to be taxable  
14 property in the county for purposes of determining assessed valuation in the  
15 county under this item.

16           (ii) The proportion that the distribution base monies collected during  
17 the calendar month in each county under this article, section 42-5164,  
18 subsection B, section 42-5205, subsection B and section 42-5353 bear to the  
19 total distribution base monies collected under this article, section 42-5164,  
20 subsection B, section 42-5205, subsection B and section 42-5353 throughout  
21 the state for the calendar month.

22           (b) If the proportion computed under subdivision (a) of this paragraph  
23 for any county is greater than the proportion computed under paragraph 2 of  
24 this subsection, the department shall compute the difference between the  
25 amount distributed to that county under paragraph 2 of this subsection and  
26 the amount that would have been distributed under paragraph 2 of this  
27 subsection using the proportion computed under subdivision (a) of this  
28 paragraph and shall pay that difference to the county from the amount  
29 available for distribution under this paragraph. Any monies remaining after  
30 all payments under this subdivision shall be distributed among the counties  
31 according to the proportions computed under paragraph 2 of this subsection.

32           4. After any distributions required by sections 42-5030, 42-5030.01,  
33 42-5031, 42-5032, ~~and~~ 42-5032.01 AND 42-5032.02, and after making any  
34 transfer to the water quality assurance revolving fund as required by section  
35 49-282, subsection B, credit the remainder of the monies designated as  
36 distribution base to the state general fund. From this amount:

37           (a) The legislature shall annually appropriate to:

38           (i) The department of revenue sufficient monies to administer and  
39 enforce this article and articles 5 and 8 of this chapter.

40           (ii) The department of economic security monies to be used for the  
41 purposes stated in title 46, chapter 1.

42           (iii) The firearms safety and ranges fund established by section  
43 17-273, fifty thousand dollars derived from the taxes collected from the  
44 retail classification pursuant to section 42-5061 for the current fiscal  
45 year.

1 (b) The state treasurer shall transfer to the tourism fund an amount  
2 equal to the sum of the following:

3 (i) Three and one-half per cent of the gross revenues derived from the  
4 transient lodging classification pursuant to section 42-5070 during the  
5 preceding fiscal year.

6 (ii) Three per cent of the gross revenues derived from the amusement  
7 classification pursuant to section 42-5073 during the preceding fiscal year.

8 (iii) Two per cent of the gross revenues derived from the restaurant  
9 classification pursuant to section 42-5074 during the preceding fiscal year.

10 E. If approved by the qualified electors voting at a statewide general  
11 election, all monies collected pursuant to section 42-5010, subsection G and  
12 section 42-5155, subsection D shall be distributed each fiscal year pursuant  
13 to this subsection. The monies distributed pursuant to this subsection are  
14 in addition to any other appropriation, transfer or other allocation of  
15 public or private monies from any other source and shall not supplant,  
16 replace or cause a reduction in other school district, charter school,  
17 university or community college funding sources. The monies shall be  
18 distributed as follows:

19 1. If there are outstanding state school facilities revenue bonds  
20 pursuant to title 15, chapter 16, article 7, each month one-twelfth of the  
21 amount that is necessary to pay the fiscal year's debt service on outstanding  
22 state school improvement revenue bonds for the current fiscal year shall be  
23 transferred each month to the school improvement revenue bond debt service  
24 fund established by section 15-2084. The total amount of bonds for which  
25 these monies may be allocated for the payment of debt service shall not  
26 exceed a principal amount of eight hundred million dollars exclusive of  
27 refunding bonds and other refinancing obligations.

28 2. After any transfer of monies pursuant to paragraph 1 of this  
29 subsection, twelve per cent of the remaining monies collected during the  
30 preceding month shall be transferred to the technology and research  
31 initiative fund established by section 15-1648 to be distributed among the  
32 universities for the purpose of investment in technology and research-based  
33 initiatives.

34 3. After the transfer of monies pursuant to paragraph 1 of this  
35 subsection, three per cent of the remaining monies collected during the  
36 preceding month shall be transferred to the workforce development account  
37 established in each community college district pursuant to section 15-1472  
38 for the purpose of investment in workforce development programs.

39 4. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
40 subsection, one-twelfth of the amount a community college that is owned,  
41 operated or chartered by a qualifying Indian tribe on its own Indian  
42 reservation would receive pursuant to section 15-1472, subsection D,  
43 paragraph 2 if it were a community college district shall be distributed each  
44 month to the treasurer or other designated depository of a qualifying Indian  
45 tribe. Monies distributed pursuant to this paragraph are for the exclusive

1 purpose of providing support to one or more community colleges owned,  
2 operated or chartered by a qualifying Indian tribe and shall be used in a  
3 manner consistent with section 15-1472, subsection B. For THE purposes of  
4 this paragraph, "qualifying Indian tribe" has the same meaning as defined in  
5 section 42-5031.01, subsection D.

6 5. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
7 subsection, one-twelfth of the following amounts shall be transferred each  
8 month to the department of education for the increased cost of basic state  
9 aid under section 15-971 due to added school days and associated teacher  
10 salary increases enacted in 2000:

11 (a) In fiscal year 2001-2002, \$15,305,900.

12 (b) In fiscal year 2002-2003, \$31,530,100.

13 (c) In fiscal year 2003-2004, \$48,727,700.

14 (d) In fiscal year 2004-2005, \$66,957,200.

15 (e) In fiscal year 2005-2006 and each fiscal year thereafter,  
16 \$86,280,500.

17 6. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
18 subsection, seven million eight hundred thousand dollars is appropriated each  
19 fiscal year, to be paid in monthly installments, to the department of  
20 education to be used for school safety as provided in section 15-154 and two  
21 hundred thousand dollars is appropriated each fiscal year, to be paid in  
22 monthly installments to the department of education to be used for the  
23 character education matching grant program as provided in section 15-154.01.

24 7. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
25 subsection, no more than seven million dollars may be appropriated by the  
26 legislature each fiscal year to the department of education to be used for  
27 accountability purposes as described in section 15-241 and title 15, chapter  
28 9, article 8.

29 8. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
30 subsection, one million five hundred thousand dollars is appropriated each  
31 fiscal year, to be paid in monthly installments, to the failing schools  
32 tutoring fund established by section 15-241.

33 9. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
34 subsection, twenty-five million dollars shall be transferred each fiscal year  
35 to the state general fund to reimburse the general fund for the cost of the  
36 income tax credit allowed by section 43-1072.01.

37 10. After the payment of monies pursuant to paragraphs 1 through 9 of  
38 this subsection, the remaining monies collected during the preceding month  
39 shall be transferred to the classroom site fund established by section  
40 15-977. The monies shall be allocated as follows in the manner prescribed by  
41 section 15-977:

42 (a) Forty per cent shall be allocated for teacher compensation based  
43 on performance.

1 (b) Twenty per cent shall be allocated for increases in teacher base  
2 compensation and employee related expenses.

3 (c) Forty per cent shall be allocated for maintenance and operation  
4 purposes.

5 F. The department shall credit the remainder of the monies in the  
6 transaction privilege and severance tax clearing account to the state general  
7 fund, subject to any distribution required by section 42-5030.01.

8 G. Notwithstanding subsection D of this section, if a court of  
9 competent jurisdiction finally determines that tax monies distributed under  
10 this section were illegally collected under this article or articles 5 and 8  
11 of this chapter and orders the monies to be refunded to the taxpayer, the  
12 department shall compute the amount of such monies that was distributed to  
13 each city, town and county under this section. The department shall notify  
14 the state treasurer of that amount plus the proportionate share of additional  
15 allocated costs required to be paid to the taxpayer. Each city's, town's and  
16 county's proportionate share of the costs shall be based on the amount of the  
17 original tax payment each municipality and county received. Each month the  
18 state treasurer shall reduce the amount otherwise distributable to the city,  
19 town and county under this section by one thirty-sixth of the total amount to  
20 be recovered from the city, town or county until the total amount has been  
21 recovered, but the monthly reduction for any city, town or county shall not  
22 exceed ten per cent of the full monthly distribution to that entity. The  
23 reduction shall begin for the first calendar month after the final  
24 disposition of the case and shall continue until the total amount, including  
25 interest and costs, has been recovered.

26 H. On receiving a certificate of default from the greater Arizona  
27 development authority pursuant to section 41-1554.06 or 41-1554.07 and to the  
28 extent not otherwise expressly prohibited by law, the state treasurer shall  
29 withhold from the next succeeding distribution of monies pursuant to this  
30 section due to the defaulting political subdivision the amount specified in  
31 the certificate of default and immediately deposit the amount withheld in the  
32 greater Arizona development authority revolving fund. The state treasurer  
33 shall continue to withhold and deposit the monies until the greater Arizona  
34 development authority certifies to the state treasurer that the default has  
35 been cured. In no event may the state treasurer withhold any amount that the  
36 defaulting political subdivision certifies to the state treasurer and the  
37 authority as being necessary to make any required deposits then due for the  
38 payment of principal and interest on bonds of the political subdivision that  
39 were issued before the date of the loan repayment agreement or bonds and that  
40 have been secured by a pledge of distributions made pursuant to this section.

41 I. Except as provided by sections 42-5033 and 42-5033.01, the  
42 population of a county, city or town as determined by the most recent United  
43 States decennial census plus any revisions to the decennial census certified  
44 by the United States bureau of the census shall be used as the basis for  
45 apportioning monies pursuant to subsection D of this section.

1 J. EXCEPT AS OTHERWISE PROVIDED BY THIS SUBSECTION, ON NOTICE FROM THE  
2 DEPARTMENT OF REVENUE PURSUANT TO SECTION 42-6010, SUBSECTION B, THE STATE  
3 TREASURER SHALL WITHHOLD FROM THE DISTRIBUTION OF MONIES PURSUANT TO THIS  
4 SECTION TO THE AFFECTED CITY OR TOWN THE AMOUNT OF THE PENALTY FOR BUSINESS  
5 LOCATION MUNICIPAL TAX INCENTIVES PROVIDED BY THE CITY OR TOWN TO A BUSINESS  
6 ENTITY THAT LOCATES A RETAIL BUSINESS FACILITY IN THE CITY OR TOWN. THE  
7 STATE TREASURER SHALL CONTINUE TO WITHHOLD MONIES PURSUANT TO THIS SUBSECTION  
8 UNTIL THE ENTIRE AMOUNT OF THE PENALTY HAS BEEN WITHHELD. THE STATE  
9 TREASURER SHALL CREDIT ANY MONIES WITHHELD PURSUANT TO THIS SUBSECTION TO THE  
10 STATE GENERAL FUND AS PROVIDED BY SUBSECTION D, PARAGRAPH 4 OF THIS SECTION.  
11 THE STATE TREASURER SHALL NOT WITHHOLD ANY AMOUNT THAT THE CITY OR TOWN  
12 CERTIFIES TO THE DEPARTMENT OF REVENUE AND THE STATE TREASURER AS BEING  
13 NECESSARY TO MAKE ANY REQUIRED DEPOSITS OR PAYMENTS FOR DEBT SERVICE ON BONDS  
14 OR OTHER LONG-TERM OBLIGATIONS OF THE CITY OR TOWN THAT WERE ISSUED OR  
15 INCURRED BEFORE THE LOCATION INCENTIVES PROVIDED BY THE CITY OR TOWN.

16 ~~J.~~ K. For the purposes of this section, "community college district"  
17 means a community college district that is established pursuant to sections  
18 15-1402 and 15-1403 and that is a political subdivision of this state.

19 Sec. 2. Repeal

20 Section 42-5029, Arizona Revised Statutes, as amended by Laws 2007,  
21 chapter 276, section 1, is repealed.

22 Sec. 3. Title 42, chapter 5, article 1, Arizona Revised Statutes, is  
23 amended by adding section 42-5032.02, to read:

24 42-5032.02. Distribution of revenues for city or town  
25 infrastructure improvements related to state  
26 university construction; definition

27 A. EACH MONTH THE STATE TREASURER SHALL PAY A CITY OR TOWN, FROM THE  
28 AMOUNT DESIGNATED AS DISTRIBUTION BASE PURSUANT TO SECTION 42-5029,  
29 SUBSECTION D, THE AMOUNT DETERMINED UNDER SUBSECTION B OF THIS SECTION FOR  
30 THE PURPOSE OF FUNDING UP TO EIGHTY PER CENT OF THE COST OF INFRASTRUCTURE  
31 IMPROVEMENTS THAT RELATE DIRECTLY TO THE CONSTRUCTION OF BUILDINGS AND  
32 ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY THAT IS UNDER THE  
33 JURISDICTION OF THE ARIZONA BOARD OF REGENTS.

34 B. THE AMOUNT TO BE PAID TO A CITY OR TOWN UNDER SUBSECTION A OF THIS  
35 SECTION IS THE TOTAL AMOUNT OF STATE TRANSACTION PRIVILEGE TAX REVENUES  
36 COLLECTED UNDER SECTION 42-5010, SUBSECTION A FROM PERSONS CONDUCTING  
37 BUSINESS UNDER SECTION 42-5075 DERIVED FROM CONTRACTS TO CONSTRUCT BUILDINGS  
38 OR ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY THAT IS UNDER THE  
39 JURISDICTION OF THE ARIZONA BOARD OF REGENTS. IF STATE MONIES ARE USED TO  
40 FULLY OR PARTIALLY FUND A UNIVERSITY CONSTRUCTION PROJECT, THE TRANSACTION  
41 PRIVILEGE TAX REVENUES ATTRIBUTABLE TO PAYMENTS MADE FROM STATE MONIES SHALL  
42 NOT BE INCLUDED WHEN CALCULATING THE AMOUNT TO BE PAID UNDER THIS SECTION.

43 C. BEFORE THE COMMENCEMENT OF EACH UNIVERSITY BUILDING OR ASSOCIATED  
44 IMPROVEMENT CONSTRUCTION PROJECT THAT WILL REQUIRE A CITY OR TOWN TO MAKE  
45 INFRASTRUCTURE IMPROVEMENTS, THE CITY OR TOWN SHALL ENTER INTO A WRITTEN

1 AGREEMENT WITH THE DEPARTMENT. THIS AGREEMENT AND ANY AMENDMENTS OR CHANGES  
2 TO THE AGREEMENT SHALL:

3 1. STATE THAT THE MONIES RECEIVED UNDER THIS SECTION WILL BE USED  
4 EXCLUSIVELY TO PAY FOR INFRASTRUCTURE IMPROVEMENTS THAT RELATE DIRECTLY TO  
5 THE CONSTRUCTION OF UNIVERSITY BUILDINGS AND ASSOCIATED IMPROVEMENTS.

6 2. STATE THAT THE CITY OR TOWN WILL PAY A MINIMUM OF TWENTY PER CENT  
7 OF THE COST OF THE INFRASTRUCTURE IMPROVEMENTS WITH ITS OWN MONIES.

8 3. STATE THAT THE CITY OR TOWN WILL IMMEDIATELY NOTIFY THE DEPARTMENT  
9 WHEN MONIES RECEIVED UNDER THIS SECTION EXCEED EIGHTY PER CENT OF THE COST OF  
10 THE INFRASTRUCTURE IMPROVEMENTS AND WILL RETURN THE AMOUNT OF THE EXCESS TO  
11 THE STATE TREASURER FOR DEPOSIT TO THE STATE GENERAL FUND.

12 4. STIPULATE THE ACTUAL AMOUNT OF THE CONSTRUCTION FUNDING THAT WILL  
13 BE DERIVED FROM SOURCES OTHER THAN THE STATE.

14 5. IDENTIFY THE PERSONS WHO WILL BE PRIME CONTRACTORS ON EACH  
15 UNIVERSITY CONSTRUCTION PROJECT AND STATE THAT EACH PRIME CONTRACTOR HAS BEEN  
16 NOTIFIED AS TO WHICH PORTION OF THE CONTRACTOR'S INCOME SHALL BE SEPARATELY  
17 IDENTIFIED TO THE DEPARTMENT PURSUANT TO SECTION 42-5075, SUBSECTION H.

18 6. PROVIDE ANY OTHER INFORMATION DEEMED NECESSARY BY THE DEPARTMENT.

19 D. ON NOTIFICATION FROM A CITY OR TOWN THAT MONIES RECEIVED UNDER THIS  
20 SECTION HAVE MET OR EXCEEDED EIGHTY PER CENT OF THE COST OF THE  
21 INFRASTRUCTURE IMPROVEMENTS RELATED TO A SPECIFIC UNIVERSITY CONSTRUCTION  
22 PROJECT, THE DEPARTMENT SHALL CEASE PAYMENTS UNDER SUBSECTION A OF THIS  
23 SECTION RELATED TO THIS PROJECT.

24 E. FOR THE PURPOSES OF THIS SECTION, "INFRASTRUCTURE" MEANS WATER OR  
25 SEWER LINES, SIDEWALKS, STREETS, ROADS, TRAFFIC CONTROL AND PUBLIC PARKING  
26 IMPROVEMENTS THAT RELATE DIRECTLY TO THE CONSTRUCTION OF BUILDINGS AND  
27 ASSOCIATED IMPROVEMENTS FOR THE BENEFIT OF A UNIVERSITY THAT IS UNDER THE  
28 JURISDICTION OF THE ARIZONA BOARD OF REGENTS.

29 Sec. 4. Section 42-5075, Arizona Revised Statutes, is amended to read:

30 42-5075. Prime contracting classification; exemptions;  
31 definitions

32 A. The prime contracting classification is comprised of the business  
33 of prime contracting and dealership of manufactured buildings. Sales for  
34 resale to another dealership of manufactured buildings are not subject to  
35 tax. Sales for resale do not include sales to a lessor of manufactured  
36 buildings. The sale of a used manufactured building is not taxable under  
37 this chapter. The proceeds from alteration and repairs to a used  
38 manufactured building are taxable under this section.

39 B. The tax base for the prime contracting classification is sixty-five  
40 per cent of the gross proceeds of sales or gross income derived from the  
41 business. The following amounts shall be deducted from the gross proceeds of  
42 sales or gross income before computing the tax base:

43 1. The sales price of land, which shall not exceed the fair market  
44 value.

1           2. Sales and installation of groundwater measuring devices required  
2 under section 45-604 and groundwater monitoring wells required by law,  
3 including monitoring wells installed for acquiring information for a permit  
4 required by law.

5           3. The sales price of furniture, furnishings, fixtures, appliances and  
6 attachments that are not incorporated as component parts of or attached to a  
7 manufactured building or the setup site. The sale of such items may be  
8 subject to the taxes imposed by article 1 of this chapter separately and  
9 distinctly from the sale of the manufactured building.

10           4. The gross proceeds of sales or gross income received from a  
11 contract entered into for the construction, alteration, repair, addition,  
12 subtraction, improvement, movement, wrecking or demolition of any building,  
13 highway, road, railroad, excavation, manufactured building or other  
14 structure, project, development or improvement located in a military reuse  
15 zone for providing aviation or aerospace services or for a manufacturer,  
16 assembler or fabricator of aviation or aerospace products within an active  
17 military reuse zone after the zone is initially established or renewed under  
18 section 41-1531. To be eligible to qualify for this deduction, before  
19 beginning work under the contract, the prime contractor must have applied for  
20 a letter of qualification from the department of revenue.

21           5. The gross proceeds of sales or gross income derived from a contract  
22 to construct a qualified environmental technology manufacturing, producing or  
23 processing facility, as described in section 41-1514.02, and from subsequent  
24 construction and installation contracts that begin within ten years after the  
25 start of initial construction. To qualify for this deduction, before  
26 beginning work under the contract, the prime contractor must obtain a letter  
27 of qualification from the department of revenue. This paragraph shall apply  
28 for ten full consecutive calendar or fiscal years after the start of initial  
29 construction.

30           6. The gross proceeds of sales or gross income from a contract to  
31 provide for one or more of the following actions, or a contract for site  
32 preparation, constructing, furnishing or installing machinery, equipment or  
33 other tangible personal property, including structures necessary to protect  
34 exempt incorporated materials or installed machinery or equipment, and  
35 tangible personal property incorporated into the project, to perform one or  
36 more of the following actions in response to a release or suspected release  
37 of a hazardous substance, pollutant or contaminant from a facility to the  
38 environment, unless the release was authorized by a permit issued by a  
39 governmental authority:

40           (a) Actions to monitor, assess and evaluate such a release or a  
41 suspected release.

42           (b) Excavation, removal and transportation of contaminated soil and  
43 its treatment or disposal.

1 (c) Treatment of contaminated soil by vapor extraction, chemical or  
2 physical stabilization, soil washing or biological treatment to reduce the  
3 concentration, toxicity or mobility of a contaminant.

4 (d) Pumping and treatment or in situ treatment of contaminated  
5 groundwater or surface water to reduce the concentration or toxicity of a  
6 contaminant.

7 (e) The installation of structures, such as cutoff walls or caps, to  
8 contain contaminants present in groundwater or soil and prevent them from  
9 reaching a location where they could threaten human health or welfare or the  
10 environment.

11 This paragraph does not include asbestos removal or the construction or use  
12 of ancillary structures such as maintenance sheds, offices or storage  
13 facilities for unattached equipment, pollution control equipment, facilities  
14 or other control items required or to be used by a person to prevent or  
15 control contamination before it reaches the environment.

16 7. The gross proceeds of sales or gross income that is derived from a  
17 contract entered into for the installation, assembly, repair or maintenance  
18 of machinery, equipment or other tangible personal property that is deducted  
19 from the tax base of the retail classification pursuant to section 42-5061,  
20 subsection B, or that is exempt from use tax pursuant to section 42-5159,  
21 subsection B, and that does not become a permanent attachment to a building,  
22 highway, road, railroad, excavation or manufactured building or other  
23 structure, project, development or improvement. If the ownership of the  
24 realty is separate from the ownership of the machinery, equipment or tangible  
25 personal property, the determination as to permanent attachment shall be made  
26 as if the ownership were the same. The deduction provided in this paragraph  
27 does not include gross proceeds of sales or gross income from that portion of  
28 any contracting activity which consists of the development of, or  
29 modification to, real property in order to facilitate the installation,  
30 assembly, repair, maintenance or removal of machinery, equipment or other  
31 tangible personal property that is deducted from the tax base of the retail  
32 classification pursuant to section 42-5061, subsection B or that is exempt  
33 from use tax pursuant to section 42-5159, subsection B. For the purposes of  
34 this paragraph, "permanent attachment" means at least one of the following:

35 (a) To be incorporated into real property.

36 (b) To become so affixed to real property that it becomes a part of  
37 the real property.

38 (c) To be so attached to real property that removal would cause  
39 substantial damage to the real property from which it is removed.

40 8. Through December 31, 2009, the gross proceeds of sales or gross  
41 income received from a contract for constructing any lake facility  
42 development in a commercial enhancement reuse district that is designated  
43 pursuant to section 9-499.08 if the prime contractor maintains the following  
44 records in a form satisfactory to the department and to the city or town in  
45 which the property is located:

1 (a) The certificate of qualification of the lake facility development  
2 issued by the city or town pursuant to section 9-499.08, subsection D.

3 (b) All state and local transaction privilege tax returns for the  
4 period of time during which the prime contractor received gross proceeds of  
5 sales or gross income from a contract to construct a lake facility  
6 development in a designated commercial enhancement reuse district, showing  
7 the amount exempted from state and local taxation.

8 (c) Any other information that the department considers to be  
9 necessary.

10 9. The gross proceeds of sales or gross income attributable to the  
11 purchase of machinery, equipment or other tangible personal property that is  
12 exempt from or deductible from transaction privilege and use tax under:

13 (a) Section 42-5061, subsection A, paragraph 25 or 29.

14 (b) Section 42-5061, subsection B.

15 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),  
16 (c), (d), (e), (f), (i), (j) or (l).

17 (d) Section 42-5159, subsection B.

18 10. The gross proceeds of sales or gross income received from a  
19 contract for the construction of an environmentally controlled facility for  
20 the raising of poultry for the production of eggs and the sorting, cooling  
21 and packaging of eggs.

22 11. The gross proceeds of sales or gross income that is derived from a  
23 contract entered into with a person who is engaged in the commercial  
24 production of livestock, livestock products or agricultural, horticultural,  
25 viticultural or floricultural crops or products in this state for the  
26 construction, alteration, repair, improvement, movement, wrecking or  
27 demolition or addition to or subtraction from any building, highway, road,  
28 excavation, manufactured building or other structure, project, development or  
29 improvement used directly and primarily to prevent, monitor, control or  
30 reduce air, water or land pollution.

31 12. The gross proceeds of sales or gross income that is derived from  
32 the installation, assembly, repair or maintenance of clean rooms that are  
33 deducted from the tax base of the retail classification pursuant to section  
34 42-5061, subsection B, paragraph 17.

35 13. For taxable periods beginning from and after June 30, 2001, the  
36 gross proceeds of sales or gross income derived from a contract entered into  
37 for the construction of a residential apartment housing facility that  
38 qualifies for a federal housing subsidy for low income persons over sixty-two  
39 years of age and that is owned by a nonprofit charitable organization that  
40 has qualified under section 501(c)(3) of the internal revenue code.

41 14. For taxable periods beginning from and after December 31, 1996 and  
42 ending before January 1, 2011, the gross proceeds of sales or gross income  
43 derived from a contract to provide and install a solar energy device. The  
44 contractor shall register with the department as a solar energy contractor.  
45 By registering, the contractor acknowledges that it will make its books and

1 records relating to sales of solar energy devices available to the department  
2 for examination.

3 15. The gross proceeds of sales or gross income derived from a contract  
4 entered into for the construction of a launch site, as defined in 14 Code of  
5 Federal Regulations section 401.5.

6 16. The gross proceeds of sales or gross income derived from a contract  
7 entered into for the construction of a domestic violence shelter that is  
8 owned and operated by a nonprofit charitable organization that has qualified  
9 under section 501(c)(3) of the internal revenue code.

10 17. The gross proceeds of sales or gross income derived from contracts  
11 to perform postconstruction treatment of real property for termite and  
12 general pest control, including wood destroying organisms.

13 18. The gross proceeds of sales or gross income received from contracts  
14 entered into before July 1, 2006 for constructing a state university research  
15 infrastructure project if the project has been reviewed by the joint  
16 committee on capital review before the university enters into the  
17 construction contract for the project. For the purposes of this paragraph,  
18 "research infrastructure" has the same meaning prescribed in section 15-1670.

19 19. The gross proceeds of sales or gross income received from a  
20 contract for the construction of any building, or other structure, project,  
21 development or improvement owned by a qualified business under section  
22 41-1516 for harvesting or the initial processing of qualifying forest  
23 products removed from qualifying projects as defined in section 41-1516 if  
24 actual construction begins before January 1, 2010. To qualify for this  
25 deduction, the prime contractor must obtain a letter of qualification from  
26 the department of commerce before beginning work under the contract.

27 20. The gross proceeds of sales or gross income received from a  
28 contract for the construction of any building or other structure associated  
29 with motion picture production in this state. To qualify for the deduction,  
30 at the time the contract is entered into the motion picture production  
31 company must present to the prime contractor its certificate that is issued  
32 pursuant to section 42-5009, subsection H and that establishes its  
33 qualification for the deduction.

34 21. Any amount of the gross proceeds of sales or gross income from a  
35 contract that constitutes development or impact fees paid to the state or a  
36 local government to offset governmental costs of providing public  
37 infrastructure, public safety and other public services to a development.

38 C. Entitlement to the deduction pursuant to subsection B, paragraph 7  
39 of this section is subject to the following provisions:

40 1. A prime contractor may establish entitlement to the deduction by  
41 both:

42 (a) Marking the invoice for the transaction to indicate that the gross  
43 proceeds of sales or gross income derived from the transaction was deducted  
44 from the base.

1 (b) Obtaining a certificate executed by the purchaser indicating the  
2 name and address of the purchaser, the precise nature of the business of the  
3 purchaser, the purpose for which the purchase was made, the necessary facts  
4 to establish the deductibility of the property under section 42-5061,  
5 subsection B, and a certification that the person executing the certificate  
6 is authorized to do so on behalf of the purchaser. The certificate may be  
7 disregarded if the prime contractor has reason to believe that the  
8 information contained in the certificate is not accurate or complete.

9 2. A person who does not comply with paragraph 1 of this subsection  
10 may establish entitlement to the deduction by presenting facts necessary to  
11 support the entitlement, but the burden of proof is on that person.

12 3. The department may prescribe a form for the certificate described  
13 in paragraph 1, subdivision (b) of this subsection. The department may also  
14 adopt rules that describe the transactions with respect to which a person is  
15 not entitled to rely solely on the information contained in the certificate  
16 provided in paragraph 1, subdivision (b) of this subsection but must instead  
17 obtain such additional information as required in order to be entitled to the  
18 deduction.

19 4. If a prime contractor is entitled to a deduction by complying with  
20 paragraph 1 of this subsection, the department may require the purchaser who  
21 caused the execution of the certificate to establish the accuracy and  
22 completeness of the information required to be contained in the certificate  
23 which would entitle the prime contractor to the deduction. If the purchaser  
24 cannot establish the accuracy and completeness of the information, the  
25 purchaser is liable in an amount equal to any tax, penalty and interest which  
26 the prime contractor would have been required to pay under article 1 of this  
27 chapter if the prime contractor had not complied with paragraph 1 of this  
28 subsection. Payment of the amount under this paragraph exempts the purchaser  
29 from liability for any tax imposed under article 4 of this chapter. The  
30 amount shall be treated as a transaction privilege tax to the purchaser and  
31 as tax revenues collected from the prime contractor in order to designate the  
32 distribution base for purposes of section 42-5029.

33 D. Subcontractors or others who perform services in respect to any  
34 improvement, building, highway, road, railroad, excavation, manufactured  
35 building or other structure, project, development or improvement are not  
36 subject to tax if they can demonstrate that the job was within the control of  
37 a prime contractor or contractors or a dealership of manufactured buildings  
38 and that the prime contractor or dealership is liable for the tax on the  
39 gross income, gross proceeds of sales or gross receipts attributable to the  
40 job and from which the subcontractors or others were paid.

41 E. Amounts received by a contractor for a project are excluded from  
42 the contractor's gross proceeds of sales or gross income derived from the  
43 business if the person who hired the contractor executes and provides a  
44 certificate to the contractor stating that the person providing the  
45 certificate is a prime contractor and is liable for the tax under article 1

1 of this chapter. The department shall prescribe the form of the certificate.  
2 If the contractor has reason to believe that the information contained on the  
3 certificate is erroneous or incomplete, the department may disregard the  
4 certificate. If the person who provides the certificate is not liable for  
5 the tax as a prime contractor, that person is nevertheless deemed to be the  
6 prime contractor in lieu of the contractor and is subject to the tax under  
7 this section on the gross receipts or gross proceeds received by the  
8 contractor.

9 F. Every person engaging or continuing in this state in the business  
10 of prime contracting or dealership of manufactured buildings shall present to  
11 the purchaser of such prime contracting or manufactured building a written  
12 receipt of the gross income or gross proceeds of sales from such activity and  
13 shall separately state the taxes to be paid pursuant to this section.

14 G. For the purposes of section 42-5032.01, the department shall  
15 separately account for revenues collected under the prime contracting  
16 classification from any prime contractor engaged in the preparation or  
17 construction of a multipurpose facility, and related infrastructure, that is  
18 owned, operated or leased by the tourism and sports authority pursuant to  
19 title 5, chapter 8.

20 H. FOR THE PURPOSES OF SECTION 42-5032.02, THROUGH DECEMBER 31, 2013,  
21 THE DEPARTMENT SHALL SEPARATELY ACCOUNT FOR REVENUES REPORTED AND COLLECTED  
22 UNDER THE PRIME CONTRACTING CLASSIFICATION FROM ANY PRIME CONTRACTOR ENGAGED  
23 IN THE CONSTRUCTION OF ANY BUILDINGS THAT ARE FOR THE BENEFIT OF A UNIVERSITY  
24 THAT IS UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS.

25 ~~H.~~ I. The gross proceeds of sales or gross income derived from a  
26 contract for lawn maintenance services are not subject to tax under this  
27 section if the contract does not include landscaping activities. Lawn  
28 maintenance service is a service pursuant to section 42-5061, subsection A,  
29 paragraph 1, and includes lawn mowing and edging, weeding, repairing  
30 sprinkler heads or drip irrigation heads, seasonal replacement of flowers,  
31 refreshing gravel, lawn de-thatching, seeding winter lawns, leaf and debris  
32 collection and removal, tree or shrub pruning or clipping, garden and gravel  
33 raking and applying pesticides, as defined in section 3-361, and fertilizer  
34 materials, as defined in section 3-262.

35 ~~I.~~ J. The gross proceeds of sales or gross income derived from  
36 landscaping activities are subject to tax under this section. Landscaping  
37 includes installing lawns, grading or leveling ground, installing gravel or  
38 boulders, planting trees and other plants, felling trees, removing or  
39 mulching tree stumps, removing other imbedded plants, building or modifying  
40 irrigation berms, repairing sprinkler or watering systems, installing  
41 railroad ties and installing underground sprinkler or watering systems.

42 ~~J.~~ K. The portion of gross proceeds of sales or gross income  
43 attributable to the actual direct costs of providing architectural or  
44 engineering services that are incorporated in a contract is not subject to  
45 tax under this section. For the purposes of this subsection, "direct costs"

1 means the portion of the actual costs that are directly expended in providing  
2 architectural or engineering services.

3 ~~K.~~ L. Operating a landfill or a solid waste disposal facility is not  
4 subject to taxation under this section, including filling, compacting and  
5 creating vehicle access to and from cell sites within the landfill.  
6 Constructing roads to a landfill or solid waste disposal facility and  
7 constructing cells within a landfill or solid waste disposal facility may be  
8 deemed prime contracting under this section.

9 ~~L.~~ M. The following apply to manufactured buildings:

10 1. For sales in this state where the dealership of manufactured  
11 buildings contracts to deliver the building to a setup site or to perform the  
12 setup in this state, the taxable situs is the setup site.

13 2. For sales in this state where the dealership of manufactured  
14 buildings does not contract to deliver the building to a setup site or does  
15 not perform the setup, the taxable situs is the location of the dealership  
16 where the building is delivered to the buyer.

17 3. For sales in this state where the dealership of manufactured  
18 buildings contracts to deliver the building to a setup site that is outside  
19 this state, the situs is outside this state and the transaction is excluded  
20 from tax.

21 ~~M.~~ N. Notwithstanding subsection ~~N-0~~, paragraph 8 of this section, a  
22 person owning real property who enters into a contract for sale of the real  
23 property, who is responsible to the new owner of the property for  
24 modifications made to the property in the period subsequent to the transfer  
25 of title and who receives a consideration for the modifications is considered  
26 a prime contractor solely for purposes of taxing the gross proceeds of sale  
27 or gross income received for the modifications made subsequent to the  
28 transfer of title. The original owner's gross proceeds of sale or gross  
29 income received for the modifications shall be determined according to the  
30 following methodology:

31 1. If any part of the contract for sale of the property specifies  
32 amounts to be paid to the original owner for the modifications to be made in  
33 the period subsequent to the transfer of title, the amounts are included in  
34 the original owner's gross proceeds of sale or gross income under this  
35 section. Proceeds from the sale of the property **THAT ARE** received after  
36 transfer of title **AND** that are unrelated to the modifications made subsequent  
37 to the transfer of title ~~will~~ **ARE** not ~~be~~ considered gross proceeds of sale or  
38 gross income from the modifications.

39 2. If the original owner enters into an agreement separate from the  
40 contract for sale of the real property providing for amounts to be paid to  
41 the original owner for the modifications to be made in the period subsequent  
42 to the transfer of title to the property, the amounts are included in the  
43 original owner's gross proceeds of sale or gross income received for the  
44 modifications made subsequent to the transfer of title.

1           3. If the original owner is responsible to the new owner for  
2 modifications made to the property in the period subsequent to the transfer  
3 of title and derives any gross proceeds of sale or gross income from the  
4 project subsequent to the transfer of title other than a delayed disbursement  
5 from escrow unrelated to the modifications, it is presumed that the amounts  
6 are received for the modifications made subsequent to the transfer of title  
7 unless the contrary is established by the owner through its books, records  
8 and papers kept in the regular course of business.

9           4. The tax base of the original owner is computed in the same manner  
10 as a prime contractor under this section.

11           ~~N~~ 0. For the purposes of this section:

12           1. "Contracting" means engaging in business as a contractor.

13           2. "Contractor" is synonymous with the term "builder" and means any  
14 person or organization that undertakes to or offers to undertake to, or  
15 purports to have the capacity to undertake to, or submits a bid to, or does  
16 personally or by or through others, modify any building, highway, road,  
17 railroad, excavation, manufactured building or other structure, project,  
18 development or improvement, or to do any part of such a project, including  
19 the erection of scaffolding or other structure or works in connection with  
20 such a project, and includes subcontractors and specialty contractors. For  
21 all purposes of taxation or deduction, this definition shall govern without  
22 regard to whether or not such contractor is acting in fulfillment of a  
23 contract.

24           3. "Dealership of manufactured buildings" means a dealer who either:

25           (a) Is licensed pursuant to title 41, chapter 16 and who sells  
26 manufactured buildings to the final consumer.

27           (b) Supervises, performs or coordinates the excavation and completion  
28 of site improvements, setup or moving of a manufactured building including  
29 the contracting, if any, with any subcontractor or specialty contractor for  
30 the completion of the contract.

31           4. "Manufactured building" means a manufactured home, mobile home or  
32 factory-built building, as defined in section 41-2142.

33           5. "Modification" means construction, alteration, repair, addition,  
34 subtraction, improvement, movement, wreckage or demolition.

35           6. "Modify" means to construct, alter, repair, add to, subtract from,  
36 improve, move, wreck or demolish.

37           7. "Prime contracting" means engaging in business as a prime  
38 contractor.

39           8. "Prime contractor" means a contractor who supervises, performs or  
40 coordinates the modification of any building, highway, road, railroad,  
41 excavation, manufactured building or other structure, project, development or  
42 improvement including the contracting, if any, with any subcontractors or  
43 specialty contractors and who is responsible for the completion of the  
44 contract. Except as provided in subsections E and ~~M~~ N of this section, a  
45 person who owns real property, who engages one or more contractors to modify

1 that real property and who does not itself modify that real property is not a  
2 prime contractor within the meaning of this paragraph regardless of the  
3 existence of a contract for sale or the subsequent sale of that real  
4 property.

5 9. "Sale of a used manufactured building" does not include a lease of  
6 a used manufactured building.

7 Sec. 5. [Delayed repeal](#)

8 Section 42-5032.02, Arizona Revised Statutes, as added by this act, is  
9 repealed from and after December 31, 2013.